

### **REMARKS**

This responds to the Office Action dated August 15, 2006, and the references cited therewith.

Claims 1-2 and 11-12 are amended. Claims 1-2, 4-12, and 14-20 are now pending in this application.

#### **Objection to the Claims**

Claims 1-2 and 11-12 were objected to due to various informalities. Applicant has amended the claims to overcome this objection.

#### **§102 and §103 Rejection of the Claims**

Claims 1-2, 7, 10-12, 17 and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Darvish et al. (U.S. Patent No. 6,292,693). Claims 4, 6, 14 and 16 were rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Darvish et al. (U.S. Patent No. 6,292,693). Claims 5 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Darvish et al. (U.S. Patent No. 6,292,693) in view of Burns (U.S. 2004/0220636). Claims 8 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Darvish et al. (U.S. Patent No. 6,292,693) in view of Zhu et al. (U.S. 2002/020306). Claims 9 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Darvish et al. (U.S. Patent No. 6,292,693) in view of Ding (U.S. 2002/0062139). The rejections are traversed and reconsideration is respectfully requested.

As amended herein, claims 1 and 11 recite a device and method, respectively, for delivering cardiac function therapy in which delivery of the cardiac function therapy is temporarily suspended at periodic intervals, the patient's cardiac function is assessed while no cardiac function therapy is being delivered, the delivery of cardiac function therapy is either ceased or continued based upon the cardiac function assessment. Although the Darvish et.al reference appears to describe a graduated application of cardiac therapy in accordance with a cardiac function assessment as pointed out by the Examiner, Applicant finds no teaching or suggestion for temporarily suspending cardiac function therapy at periodic intervals, assessing

cardiac function while the cardiac function therapy is suspended, and either ceasing or continuing the cardiac function therapy based upon the cardiac function assessment. The cardiac therapy described in the Darvish et al. reference is pacing therapy combined with ETC and is not the type of therapy that would be expected to cause an improvement in a patient's natural cardiac function over time. There would therefore be no need for periodic cardiac function assessment in order to decide whether or not to continue the therapy. This is in contrast to the cardiac function therapy claimed by Applicant which is intended to reverse cardiac remodeling. Also, with regard to the method recited by claim 11, Applicant finds no teaching or suggestion in the Darvish et al. reference for multi-site ventricular pacing which pre-excites selected myocardial regions in order to redistribute myocardial wall stress during systole for the purpose of reversing ventricular remodeling.

For the reasons given above, Applicant believes that claims 1 and 11 are patentable over the prior art of record. Dependent claims 2, 4-10, 12, and 14-20 recite additional limitations to the patentable subject matter recited by claims 1 or 11, which limitations are asserted to be neither taught nor suggested by the prior art in that context.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (847) 432-7302 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

BRUCE H. KENKNIGHT ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6912

Date 12-15-06

By J. Kevin Parker

J. Kevin Parker  
Reg. No. 33,024

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 15 day of December 2006.

Name Paula Sucsy

Signature Paula Sucsy